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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	85767380
Applicant	Mathew Beck
Applied for Mark	PORNO JESUS
Correspondence Address	PAULO A DE ALMEIDA PATEL & ALMEIDA PC 16830 VENTURA BLVD , SUITE 360 ENCINO, CA 91436 UNITED STATES Alex@PatelAlmeida.com , Paulo@PatelAlmeida.com, mattbeck-dvd@hotmail.com
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Filer's Name	Paulo A. de Almeida
Filer's e-mail	Paulo@PatelAlmeida.com
Signature	/Paulo A. de Almeida/
Date	08/27/2014

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

APPLICANT:	Mathew Beck
SERIAL NO:	85/767,380
FILED:	October 30, 2012
MARK:	PORNO JESUS
EXAMINING ATTORNEY:	John M. Gartner
LAW OFFICE:	102

APPLICANT'S REPLY BRIEF

Applicant, Mathew Beck, an individual ("Applicant"), hereby submits its reply in support of his appeal of the refusal to register PORNO JESUS, Ser. No. 85/767,380.

The Public is not "Sensitive" to the Common Use of the Word "Jesus"

A basic assumption underlying the Examining Attorney's argument that PORNO JESUS is scandalous is that "***there is a "high level of sensitivity that exists in American society as a whole regarding the use of the name Jesus***". Examining Attorney's Brief at 4. The Examining Attorney's position is based on two dictionary definitions: one which states that "Jesus Christ" is "[u]sed for expressing surprise or anger" and "[t]his use of the name Jesus Christ is offensive to many Christians"; and another which states that "Jesus" is used to "express intense surprise, dismay, etc." and is "taboo slang". *Id*. at 4. Because the public is "sensitive" to the use of the word "Jesus", the Examining Attorney argues, the "linking" of Jesus with PORNO (a non-scandalous term) creates a scandalous mark.

Applicant disagrees. The Examining Attorney has not established that the contemporary public is "sensitive" to the utterance of the word "Jesus".

First, a mere two dictionary definitions does not show the public's level of "sensitivity" to the use of the word "Jesus". The evidence could equally support the opposite conclusion: that people commonly use "Jesus" to express simple, everyday emotions such as surprise or anger, and that the common utterance of the word "Jesus" for such ordinary purposes is not particularly offensive or "sensitive" to anyone. Nor has the Examining Attorney provided any evidence showing that Christians (or non-Christians) actually avoid using purported "taboo" slang such as "Jesus" in everyday speech. The record is notably devoid of any evidence suggesting that even a single Christian—much less a substantial composite of the general public in the context of the current attitudes of today—has actually been offended or felt "sensitive" to the use of "Jesus". There is simply insufficient evidence in the record to show that the word "Jesus" should be afforded any special treatment as a "sensitive" term that would offend the public—alone or combined with another, non-scandalous term such as "PORNO".

The Mark is Not Scandalous Merely Because the Goods are Offensive

The Examining Attorney also continues to argue that the mark is offensive because the *goods* (pornography) are offensive. See Examining Attorney's Brief at 4 ("all [Christian sects] are *strongly opposed to pornography* on religious grounds . . . . Christians believe that *this prohibition against pornography comes from the teachings of Jesus* himself . . . *'every one who looks at a woman lustfully has already committed*

adultery"[1]) (emphasis added). *Id*. at 4. Again, the USPTO may not refuse registration under Section 2(a) because the *goods* are considered offensive. *See In re Madsen*, 180 USPQ 334, 335 (TTAB 1973).

The Examining Attorney attempts to distinguish his finding that the *goods* are offensive (as opposed to the mark) by citing *In re Lebanese Arak Corp.*, 94 USPQ 1215 (TTAB 2010) for the proposition that "the determination of whether a mark is scandalous or disparaging 'should not be considered in the abstract but in connection with the goods'". Examining Attorney's Brief at 9. The Examining Attorney then continues to forcefully argue that the offensive nature of the goods supports the refusal: ***"The fact that the goods comprise DVDs and video recordings in the field of adult entertainment only reinforces this scandalous and disparaging meaning of the mark PORNO JESUS."*** *Id.* at 9 (emphasis added). The Examining Attorney is wrong. The fact that the goods comprise "DVDs and video recordings in the field of adult entertainment" (i.e., pornography) is not grounds for refusal of the mark. *See In re Madsen*, *supra*, 180 USPQ at 335.

Moreover, the Board should not accept the Examining Attorney's argument that Christians disapprove of "pornography" itself as opposed to the goods—and "regardless of the nature of the goods"—and therefore the refusal is not based on disapproval of the goods. Examining Attorney's Brief at 8. There is no distinction between Applicant's *goods* and *pornography*. Applicant's goods (the only goods at issue) are pornographic recorded media, which are one and the same as the "pornography" found to be allegedly offensive. It is clear that the refusal is based on alleged disapproval of the *goods* by

[1] Again, quotations to ancient religious scripture do not show the contemporary public's attitude toward sexuality and pornography; and moreover, the prohibition of "adultery" has nothing to do with pornography.

Christians—an impermissible reason for denying registration of the mark. *See In re Madsen, supra*, 180 USPQ at 335.

The Evidence Shows that Christians View Pornography and Would Not Be "Shocked" by the Mark

The Examining Attorney reminds the Board that Christians comprise a large cross section of the contemporary public. Examining Attorney's Brief at 3. However, the Examining Attorney has not met his burden of proving that any appreciable number or proportion of Christians actually avoids the viewing of pornography or would be "shocked"—much less a substantial composite of the general public. For example, there is no statistical or other evidence in the record showing the number or proportion of Christians who strictly comply with Christian beliefs and actually abstain from viewing pornography because they deem it to be "offensive" or "shocking". Rather, the Examining Attorney simply *assumes without proving* that "all" Christians would be shocked by Applicant's Mark, regardless of whether they are strictly practicing Christians or casually identify as "Christian" without following Christian teachings.

Applicant, on the other hand, has submitted evidence showing that fifty percent (50%) of Christian men and twenty percent (20%) of Christian women regularly view pornography, and there is even an entire genre of "Christian Porn". Applicant has submitted other evidence showing that contemporary Christians have liberalized attitudes toward sexuality, including pornography. Such Christians would not be offended by pornography or Applicant's Mark. Particularly in view of contradictory evidence, the Examining Attorney has not met his heavy burden of proving that a substantial composite

of the general public would consider Applicant's Mark to be "shocking" by contemporary standards.

Applicant's Mark is Mild in Comparison to Other Scandalous Marks

Simply stated, PORNO JESUS is mild in comparison to other marks held to be scandalous, such as **DICK HEADS**, **1-800-JACK-OFF**, and **BULLSHIT**. Further, other marks combining the allegedly "sensitive" term JESUS combined with a potentially offensive term such as REDNECK JESUS and HOOKERS FOR JESUS were allowed to register. The Board should not place PORNO JESUS in a category with DICK HEADS and BULLSHIT, as the mark is no more "offensive" or "scandalous" then REDNECK JESUS or HOOKERS FOR JESUS—neither of which are scandalous or disparaging to Christians. Further, the Board should resolve any doubt in favor of the Applicant. *See In re Mavety*, *supra* at 1374; *see also In re Hines*, 32 USPQ2d 1376 (TTAB 1994).

"**Jesus" Does Not Uniquely Refer To Christians**

Next, the Examining Attorney argues that the "linking" of "Jesus" and pornography is *disparaging* to Christians because "Jesus Christ" is a "central figure" in Christianity. Examining Attorney's Brief at 13. The Examining Attorney is incorrect.

To be disparaging, Section 2(a) strictly requires that the mark must focus on the *group of persons* that adhere to the beliefs or tenets. TMEP § 1203.03(c). Specifically here, the question is whether "Jesus Christ" is **so *uniquely and unmistakably* associated with Christians as to constitute their identity** such that when applicant's mark is used in connection with its goods, a connection would be assumed. *See Buffett v. Chi-Chi's, Inc.*, 226 USPQ 428, 430 (TTAB 1985) (emphasis added).

Here, the mere fact that Jesus Christ plays a "role" in Christian beliefs or is even a "central figure" in the Christian faith is irrelevant. "Jesus" is not the name of a religious order, and the followers of Christian teachings are not called "Jesus". Because "Jesus" does not uniquely and unmistakably refer the *followers of Christianity* and does not refer to any religious order[2], PORNO JESUS cannot uniquely and unmistakably refer to Christians as a group. *See* TMEP § 1203.03(c). For this reason alone, the mark is not uniquely disparaging to Christians, who simply do not identify themselves as "Jesus".

The Examining Attorney compares this case to *In re Lebanese*, *supra* (KHORAN for wine found to be disparaging because of the Islamic prohibition on consuming alcohol), but this case is different. While linking the Koran to alcohol might be particularly disparaging to the followers of Islam because the religion distinctly prohibits the consumption of alcohol—and that prohibition is well known and thus uniquely and unmistakably associated with Islam—there is nothing in the record to suggest that the alleged prohibition of pornography is *uniquely* Christian. Unlike KHORAN for wine, no one would assume that *only* Christians are prohibited from viewing pornography, and therefore no one would assume that PORNO JESUS automatically and uniquely refers to Christians as a group or the Christian faith itself (as opposed to, for example, the historical Jesus of Nazareth, who has been appropriated by numerous other religions). The Examining Attorney's proposed "unique" connection between PORNO JESUS and "Christianity" is simply too tenuous and unsupported by evidence.

Further still, the Applicant has submitted ample evidence showing that "Jesus" does not uniquely and unmistakably refer to Christians because Jesus plays a significant role in other religions, including Islam, Judaism, Bahá'í, Scientology, and Raëlism.

[2] There is no religious order called "Jesus".

Given the widespread appropriation of "Jesus" across numerous religions, no one would automatically assume that "Jesus" refers to Christians as a group or the Christian faith in particular. Followers of Islam or Judaism certainly would not make such an assumption because Jesus plays a different (but significant) role in those religions.

The Examining Attorney has endeavored to explain the precise status of Jesus in each religion, apparently arguing that "Jesus" has a higher status or level of importance in Christianity and therefore is "solely" associated with Christianity and not other religions:

> It is solely Christians who view Jesus as "the Jewish religious teacher whose life, death, and resurrection as reported by the Evangelists are the basis of the Christian message of salvation," "the Son of God", and "a person who was both God and man, the Messiah sent by God to save the human race from the sin it inherited through the Fall of Man.

Examining Attorney's Brief at 16. However, the exact role of Jesus in the aforementioned religions is not important. The mere fact—established by evidence of record—that Jesus plays a significant role in religions other than Christianity is more than sufficient to show that Jesus is not "uniquely and unmistakably" associated with Christians. For example, the evidence shows that:

- "Jesus' teachings and the retelling of his life story have significantly influenced the course of human history, and have directly or indirectly affected the lives of billions of people, ***even non-Christians***"; Applicant's Appeal Brief, Exhibit H ("Religious Perspectives on Jesus") (emphasis added);
- "In Islam, ***Jesus*** (commonly transliterated as Isa) ***is one of God's highest-ranked and most-beloved prophets***; *id*. (emphasis added); and

- "***The Bahá'í Faith consider Jesus to be a manifestation of God***, who are a series of personages who reflect the attributes of the divine into the human world." *Id*.

Given the widespread appropriation of Jesus by many religious groups, Christians would not be *uniquely* offended by any perceived misuse of "Jesus". Absent this threshold showing of a "unique" and "unmistakable" association between "Jesus" and Christians, the Examining Attorney cannot meet his burden of proving that Christians are uniquely disparaged by PORNO JESUS. Rather, PORNO JESUS does not specifically refer to any religious group and would not disparage anyone in particular.

CONCLUSION

Overall, the Examining Attorney has not shown that a substantial composite of the general public would be "shocked" or disparaged by Applicant's Mark PORNO JESUS under contemporary attitudes, and the "scandalous" and "disparaging" refusals under Section 2(a) should be reversed. WHEREFORE, Applicant prays that the Examining Attorney's refusal of registration be reversed, and that Applicant's mark be published for opposition.

Respectfully Submitted,

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By /Paulo A. de Almeida
Paulo A. de Almeida
Alex D. Patel
Patel & Almeida, P.C.
16830 Ventura Blvd., Suite 360
Encino, CA 91436
(818) 380-1900

Attorneys for Applicant,
Mathew Beck